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THERE is a wholesome ring to the opinion of the Supreme Court of the United States in the recently rendered case of *Norwood v. Baker*. All courts who have had occasion to consider the matter, have laid down the principle in general terms that special benefits received were the only proper basis for special assessments, and that the right to assess was limited to such benefit. But not all have had the courage to apply the principle. In this case, the question of the validity of an assessment of the whole cost of an improvement, in proportion to the front foot, on abutting proprietors, came up. The Supreme Court ruled that an arbitrary assessment of that sort could not be supported; that the system of assessment must provide a method of properly estimating the benefits received. Otherwise, it violated the provision requiring due process of law.

Judge Harlan, in rendering the majority opinion, quoted with approval the opinion in *State, Agents, etc. v. Mayor of New-ark*, 37 N. J. L., that to the extent of the excess of the assessment over the special benefit, it was an exercise of the right of eminent domain, and was a violation of the constitutional provision requiring compensation for property taken for public purposes. And also the language of the opinion in *Hammett v. Philadelphia*, 65 Pa., as follows: "Whenever a local assessment upon an individual is not grounded upon and measured by the extent of his particular benefit, it is *pro tanto* a taking of his private property for public use without any provision for compensation."

It also held that it was not necessary in order to support an injunction against such a proceeding to establish the fact that the special benefits did not equal the assessment; nor was it necessary to tender an amount equal to the benefit actually received; that as the proceedings did not provide for the ascertainment of benefits that they were in their nature void; that "the assessment was in itself an illegal one because it rested upon a basis that excluded any consideration of benefits. A decree enjoining the whole assessment was therefore an appropriate remedy."

It is a satisfaction to find courts ready to follow a general proposition to its logical consequences. There is no department of the law calling more imperatively for the protection of the individual against the action of the public authorities than this of special assessment. The temptation is a strong one to cast a burden upon the individual which should rest upon the public.

Some tribunals have apparently acted upon the theory that whatever the Legislature called a special assessment must be so considered and that it must be assumed that as the Legislature can do no wrong, such special benefits must have been found to exist, even where such an assumption violated the rules of probability. It is not too much to say that by such methods of construction the grossest extortion has sometimes been sanctioned. Tribunals which are disposed to deal with questions of this character in a spirit of timidity cannot quote the Supreme Court of the United States in their support.

The Legislature may specify the district or property which is to be assessed for benefits, but it may not decide by an arbitrary rule that the individuals in that district shall be assessed a certain amount. The last question is in its nature a judicial one, to be settled by some tribunal, not necessarily an ordinary court, which has a right to hear the parties, after notice and form its judgment after such hearing in each particular case. To quote the language of Judge Harlan: "It is one thing for the Legislature to prescribe it as a *general* rule that property abutting on a street opened by the public shall be deemed to have been specially benefited by such improvement, and therefore should specially contribute to the cost incurred by the public. It is quite a different thing to lay it down as an absolute rule that such property, whether it is in fact benefited or not by the opening of the street, may be assessed by the front foot for a fixed sum representing the whole cost of the improvement and without any right in the property owner to show when an assessment of that kind is made, or is about to be made, that the sum so fixed is in excess of the benefits received."

T. H. R.